



BENEFIT *Advisor*

In This Issue

In this second issue of the McGrawWentworth Benefit Advisor for 2005, we explore the recent changes made to USERRA (the Uniformed Services Employment and Reemployment Rights Act) by The Veterans Benefits Improvement Act of 2004. The changes include an extended health coverage continuation period and new notice requirements. This Advisor explains these two new requirements in detail.

We welcome your comments and suggestions regarding this issue of our technical bulletin. For more information on this Benefit Advisor, please contact your Account Manager or visit the McGrawWentworth web site at www.mcgrawwentworth.com.

“Special Alert: Veterans Benefits Improvement Act Changes to USERRA”

On December 10, 2004, President Bush signed into law the Veterans Benefits Improvement Act of 2004. This act made two benefit-related changes to USERRA.

USERRA prohibits discrimination in re-employment, retention, or any other employment based benefit for employees in the United States military. USERRA also protects employment privileges and benefits for employees called to “active duty in the uniform services.” When an employee completes active duty and returns within the applicable timeframe, the employer must offer the employee his or her previous position and reinstate all employee benefits as if the employee had never left. The Veterans Benefits Improvement Act of 2004 instituted the following two changes under USERRA:

- The health plan benefit continuation period now extends to 24 months.
- Employers must now notify employees of their rights and obligations.

The extension of the benefit period is effective for leaves beginning on or after December 10, 2004. The notification requirements must be adopted by March 10, 2005.

Benefit Continuation Period

The Veterans Benefits Improvement Act extends the maximum continuation period for group health plan benefits from 18 to 24 months. Many employers are not even aware that USERRA includes health plan continuation requirements. This lack of awareness

stems from the fact that until now the Department of Defense, not the employer, has been responsible for notifying military personnel called to active duty of their continuation rights.

rights.

Most military personnel elect COBRA to continue group health plan coverage, if necessary, because the requirements of USERRA mirrored COBRA in many ways. However, COBRA and USERRA continuation rights are not identical. The following is a summary of the USERRA benefit continuation requirements:

- If the military leave is 30 days or less, the employer must continue current health benefits. During this 30 day timeframe, the employee can be required to pay the same contribution as any other active employee in the same coverage class.



- Employers are compelled to treat USERRA leaves in a similar manner as they treat other employees on a leave of absence.
- USERRA health plan continuation rights are available only to employees and dependents covered by the plan when the employee is called to active service. USERRA does not define who can be considered a dependent. It is generally believed that employers can defer to their health plan definition of dependent for USERRA purposes. Moreover, dependent election rights are tied to the employee. A dependent cannot elect USERRA continuation if the employee does not elect it.
- USERRA does not dictate timeframes for an individual to elect this continuation coverage. The regulations merely state an administrator should develop a reasonable procedure and a process for employees to follow if they wish to elect USERRA continuation coverage.
- If an employee's health coverage would end because of military service, USERRA requires the employer to offer health plan continuation coverage. The employer can offer 24 months of continuation under the health plan. Coverage only needs to be extended until the employee loses reemployment rights after active duty if the employee does not return to work. In addition, an em-



ployer can cancel USERRA continuation coverage if the employee fails to pay the required premium. USERRA does not specify when a payment can be considered late, but it does allow an administrator to develop reasonable procedures to administer the continuation coverage. The employer can charge up to 102% of the full premium for coverage.

While USERRA coverage now has a longer initial benefit period than COBRA, COBRA offers greater

protections in other areas. You need to make sure your employees understand the key differences between USERRA and COBRA continuation requirements.

Comparison of COBRA and USERRA Continuation Rights

The new 24 month-benefit period may make USERRA continuation requirements more attractive to some of your employees. However, when employees are called to active duty and expect to be deployed for any length of time, they will have several coverage options to consider and relatively little time to evaluate their options. Employees may:

- Elect coverage under the military health plan, Tricare (formerly called Champus).
- Continue their group health plan coverage through USERRA continuation (if applicable).
- Continue their group health plan coverage through COBRA continuation (if applicable).

COBRA continuation and USERRA continuation requirements are not identical. The key differences are as shown in the table on page 3.

In many cases, employers may have to offer both USERRA and COBRA continuation rights to employees called to active service. Most employers understand their COBRA notification requirements. The second change to USERRA involves the employer's notification obligations.

Employer Notification Requirements

The new act requires employers to notify employees of their USERRA rights and obligations. To meet this requirement, employers can simply post a notice in the same areas they generally post other required notices, such as the FMLA rights notice. The Department of Labor must provide a sample notice for employers to use for this purpose by March 10, 2005.

The new act states employers must notify each affected employee individually of his or her USERRA rights, yet the act also states employers can satisfy this requirement by posting a general notice. If employers choose to notify each employee called to active service individually, they may want to provide the USERRA continuation rights information along with a COBRA notice to ensure the employee is aware of both options.

Conclusion

The changes to USERRA are not substantial, but they will affect your organization. The extended coverage period applies to all USERRA continuation elections made on or after December 10, 2004.

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The notification provisions are effective March 10, 2005. The Department of Labor is required to provide the sample notice posting before that date. The Act does not specify the contents of the notice. We expect the sample notice will provide more detail.

You may choose to notify your employees of their USERRA rights and obligations when they are called to active duty. Often, however, employees called to active duty receive very little notice before they

are deployed. For this reason you may want to draft a USERRA notification now, so that it is readily available. In addition, your organization will want to draft an election form that clearly indicates if an individual is electing USERRA or COBRA when called to active duty.

If you have any questions regarding the new USERRA requirements, please contact your McGraw Wentworth Account Manager. **MW**

Provision	USERRA Continuation	COBRA Continuation
Maximum Coverage Period	- 24 months for employee and dependents.	- Initially, employees and dependents are entitled to 18 months. Dependents may have coverage periods up to 36 months. - Extensions are also available under certain circumstances for the social security disabled.
Election Rights	- Employees are granted election rights for themselves and any dependents the plan covers. Dependents can not elect coverage independently.	- Employee and dependents have independent election rights. With COBRA, a spouse could elect continuation rights even if the employee declined.
Cost for Coverage	- Cost can be up to 102% of actual premium.	- Cost can be up to 102% of actual premium. - If an individual qualifies for a disability extension, 150% of the applicable premium can be charged from the 19th to the 29th month.
Applicability	- USERRA continuation rules apply to all employers regardless of size.	- COBRA rules apply only to employers with 20 or more full-time employees.
Terminating Events	- The USERRA coverage ends after 24 months or whenever the employee is discharged from active military service. - Coverage can also be terminated if the employee fails to pay continuation premiums. - Coverage may be terminated if the group health plan is terminated for other active employees.	- COBRA can be terminated for a number of reasons: * Maximum benefit period expires. * Medicare entitlement. * Coverage under another group health plan. * Late payment or non-payment of COBRA premium. * Health plan discontinues coverage for all similarly situated non-COBRA beneficiaries. * For any reason active employees would also have coverage terminated. For example if the employee commits fraud against the plan, coverage can be terminated.
Election Period and Process	- USERRA does not specify timeframes for electing coverage or a process to do so. Employers must establish reasonable procedures to allow this election.	- COBRA specifies timeframes that must be followed in regard to COBRA rights notification and coverage election.

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